UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,220	12/11/2000	Marc W. Kauffman	D2487	5436

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EXAMINER
DUONG, THOMAS

ART UNIT	PAPER NUMBER
2145	

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/734,220	KAUFFMAN ET AL.
	Examiner	Art Unit
	Thomas Duong	2145

-- Th MAILING DATE of this communication appears on the cov r sheet with the correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _01 September 2004_.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-30_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-30_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _14 May 2002_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _2_.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____ .

DETAILED ACTION

Response to Amendment

1.   This office action is in response to the amendment filed on September 1, 2004. The

amendment filed on September 1, 2004 has been entered and made of record. *Claims*

1-30 are presented for further consideration and examination.

Response to Argument

2.   The Applicants' arguments and amendments filed on September 1, 2004 have been fully

-considered, but they are not persuasive.

3.   With regard to *claim 1*, the Applicants point out that:

- *There is no "switching mechanism" in Capek et al. as defined in rejected*

  independent claim 1.

However, the Examiner finds that the Applicants' arguments are not persuasive and

maintains that the Capek reference does disclose,

- *a switching mechanism, coupled to each one of said control unit, said first cache,*

  said second cache and said streaming multimedia file for providing as an output,

  directed to the at least one end-user, a stream selected from one of said first

  cache, said streaming multimedia file and said second cache, as controlled by

  said switching output signal from said control unit so as to insert the alternative

  media file at a predetermined location in the stream, including either one of the

beginning and the end of the streaming multimedia file. (Capek, col.5, lines 20-

22; col.7, lines 49-52; col.9, lines 6-24; col.10, lines 18-28)

Capek includes a control mechanism that "will provide for the replacement of the

insertion by the requested program material once the program material is received

from the distribution server" (col.9, lines 11-13). In other words, Capek's control

mechanism will replace the insertion data, which may be *"text, graphics, animation,*

motion video, sound, etc" as well as *"the combination of data having different formats*

into a single insertion for providing a multimedia experience" (col.7, lines 49-52), with

the requested material once it is available. According to Capek, the control logic's

function is to *"replaces the insertion with the requested program material after the*

program is retrieved" (col.5, lines 20-22). Also, the *"insertion manager may then*

make a determination of how long to provide the insertion to the user before

beginning to forward the buffered data to the client in order that the last byte of data

is delivered at approximately the same time as it would have been if the data had

been downloaded directly to the client" (col.10, lines 18-27). Therefore, the

Applicants still failed to clearly disclose the novelty of the invention and identify

specific limitation, which would define patentable distinction over prior art.

4.   With regard to *claim 21*, the Applicants point out that:

- *There is no "resumption" of transmission of the streaming multimedia file (step f)*

    of claim 21) once the alternative file is finished in the Capek et al. arrangement,

    since the requested multimedia file is not accessed until the "advertisement" file

    is completed.

However, the Examiner finds that the Applicants' arguments are not persuasive and maintains that the Capek reference does disclose,

• *upon completion of said alternative media file, accessing said second cache and resuming transmission of the cached streaming multimedia file.* (Capek, col.5, lines 20-22; col.7, lines 49-52; col.9, lines 6-24; col.10, lines 18-28)

Capek includes a control mechanism that "will provide for the replacement of the insertion by the requested program material once the program material is received from the distribution server" (col.9, lines 11-13). In other words, Capek's control mechanism will replace the insertion data, which may be *"text, graphics, animation, motion video, sound, etc"* as well as *"the combination of data having different formats into a single insertion for providing a multimedia experience"* (col.7, lines 49-52), with the requested material once it is available. According to Capek, the control logic's function is to *"replaces the insertion with the requested program material after the program is retrieved"* (col.5, lines 20-22). This replacing action can be interpreted as a resumption step to discontinue with the transmission of the alternative data and to resume the delivery of the requested data. Therefore, the Applicants still failed to clearly disclose the novelty of the invention and identify specific limitation, which would define patentable distinction over prior art.

5.   With regard to *claims 2-20 and 22-30*, they are rejected at least by virtual of their dependency on the independent claims and by other reasons set forth in the previous office action. Accordingly, rejections for *claims 2-20 and 22-30* are presented as below:

Claim Rejections - 35 USC § 102

6.   The text of those sections of Title 35, U.S. Code not included in this action can be found

in a prior Office action.

7.   _Claims 1-30_ are rejected under 35 U.S.C. 102(e) as being anticipated by Capek et al.

(US006094677A).

8.   With regard to _claims 1 and 21_, Capek reference discloses,

- _a first cache (insertion repository 22) for storing a received alternative media file;_

     (Capek, col.7, lines 17-25, lines 39-47; module 22, fig.2)

     Capek teaches of an insertion repository that stores data (multimedia,

     advertisements, announcements, etc.) to be inserted in the data stream delivered

     to the requested client.

- _a second cache (server 26) for storing a streaming multimedia file;_ (Capek, col.7,

     lines 17-25; module 26, fig.2)

     Capek teaches of a server that stores data (multimedia, program material, etc.)

     to be delivered to the requested client.

- _a control unit (insertion manager 20) for receiving as a first input a control signal_

     from said first cache and generating as an output a switching control signal

     indicative of the presence or absence of a complete alternative media file being

     stored in said first cache; and (Capek, col.7, lines 17-25, lines 39-47; module 20,

     fig.2)

     Capek teaches of an insertion manager that inserts data (multimedia,

     advertisements, announcements, etc.) to be delivered to the requested client.

- *a switching mechanism, coupled to each one of said control unit, said first cache,*

  said second cache and said streaming multimedia file for providing as an output,

  directed to the at least one end-user, a stream selected from one of said first

  cache, said streaming multimedia file and said second cache, as controlled by

  said switching output signal from said control unit so as to insert the alternative

  media file at a predetermined location in the stream, including either one of the

  beginning and the end of the streaming multimedia file. (Capek, col.5, lines 20-

  22; col.7, lines 49-52; col.9, lines 6-24; col.10, lines 18-28)

Capek includes a control mechanism that "will provide for the replacement of the

insertion by the requested program material once the program material is received

from the distribution server" (col.9, lines 11-13). In other words, Capek's control

mechanism will replace the insertion data, which may be *"text, graphics, animation,*

motion video, sound, etc" as well as *"the combination of data having different formats*

into a single insertion for providing a multimedia experience" (col.7, lines 49-52), with

the requested material once it is available. According to Capek, the control logic's

function is to *"replaces the insertion with the requested program material after the*

program is retrieved" (col.5, lines 20-22). Also, the *"insertion manager may then*

make a determination of how long to provide the insertion to the user before

beginning to forward the buffered data to the client in order that the last byte of data

is delivered at approximately the same time as it would have been if the data had

been downloaded directly to the client" (col.10, lines 18-27).

9.   With regard to *claims 2-3 and 22-23*, Capek reference discloses,

- *wherein the control signal output from the first cache indicates that a complete alternative file is stored and is ready for transmission to the predetermined at least one end-user. or will be ready in time to transmit.* (Capek, col.7, lines 17-25, lines 39-47)

  Capek teaches of complete insertions of data to be delivered to the requested client.

10.   With regard to *claims 4-9*, Capek reference discloses,

- *wherein the switching mechanism supplies as an output the streaming multimedia file in the absence of a signal from the control unit that an alternative file is ready to transmit.* (Capek, col.9, lines 6-24)

  Capek teaches of a control mechanism that interact with and control the insertion of data (multimedia, advertisements, announcements, etc.) delivered to the requested client.

11.   With regard to *claims 10-11*, Capek reference discloses,

- *wherein the alternative file is defined as an advertisement file.* (Capek, col.7, lines 17-25, lines 39-47; col.7, line 66 – col.8, line 10; col.8, lines 11-14)

  Capek teaches of an insertion repository that stores data (multimedia, advertisements, announcements, etc.) to be inserted in the data stream delivered to the requested client.

12.   With regard to *claims 12-20*, Capek reference discloses,

- *wherein the arrangement is disposed at a local point of presence in a communication network.* (Capek, col.7, lines 26-37)

13.   With regard to *claims 24-30*, Capek reference discloses,

- *wherein in performing step d), switching from said streaming multimedia file to said alternative file when recognizing that an alternative file is available.* (Capek, col.9, lines 6-24)

   Capek teaches of a control mechanism that interact with and control the insertion of data (multimedia, advertisements, announcements, etc.) delivered to the requested client.
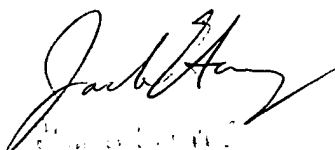
Conclusion

14.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15.   Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Thomas Duong whose telephone number is 571/272-3911. The

examiner can normally be reached on M-F 7:30AM - 4:00PM. If attempts to reach the

examiner by telephone are unsuccessful, the examiner's supervisor, Jack B Harvey can

be reached on 571/272-3896. The fax phone numbers for the organization where this

application or proceeding is assigned are 703/872-9306 for regular communications and

703/872-9306 for After Final communications. Any inquiry of a general nature or relating

to the status of this application or proceeding should be directed to the receptionist

whose telephone number is 571/272-2100.

Thomas Duong (AU2145)

December 22, 2004